

141.

**MCDONNELL & ASSOCIATES, P.C.**

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*Attorneys for Defendant, Walmart of Brick*

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CHERYLEE CRAWFORD;

Plaintiff,

v.

WALMART OF BRICK; ABC  
CORPORATIONS (1-10); DEF  
PARTNERSHIPS (1-10); GHI LIMITED  
LIABILITY COMPANIES (1-10); AND  
JOHN-JANE DOES (1-10);

Defendants.

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
OCEAN COUNTY

DOCKET NO.: OCN-L-00205-21

*Civil Action*

**DEFENDANT, WALMART OF  
BRICK’S, ANSWER TO PLAINTIFF’S  
COMPLAINT WITH AFFIRMATIVE  
DEFENSES, DESIGNATION OF  
TRIAL COUNSEL, DEMAND FOR  
DISCOVERY, CERTIFICATIONS,  
AND JURY DEMAND**

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Defendant, Walmart of Brick (hereinafter referred to as “Walmart” or “Defendant”), by way of Answer with Affirmative Defenses to Plaintiff’s Complaint, hereby aver as follows:

**FIRST COUNT**  
**(NEGLIGENCE)**

1. Denied.
2. Admitted in part and denied in part. It is admitted only that Walmart operated and maintained a retail store at all times relevant hereto. The remaining averments in this paragraph are denied.
3. Denied. Defendant need not respond to these averments as they are directed toward other parties.
4. Denied.

5. Denied.

WHEREFORE, Defendant hereby demands judgement in its favor and against all other parties, together with costs and attorneys' fees and such other relief as this Honorable Court deems equitable, just and proper.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because Plaintiff was injured as a result of known risks, which were assumed.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred insofar as Plaintiff failed to mitigate damages.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff failed to take due care for Plaintiff's own safety.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's actions caused the incident at issue.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by reason of Plaintiff's own contributory negligence or, alternatively, Plaintiff's damages, if any, are reduced by the percentage of their comparative negligence and the Comparative Negligence Act, *N.J.S.A. 2A:15-5.1, et seq.* and common law.

#### **SIXTH AFFIRMATIVE DEFENSE**

Defendant breached no duty to the Plaintiff.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Defendant is entitled to a credit or set-off with respect to any collateral payments made to Plaintiff for injuries arising from the wrong alleged pursuant to *N.J.S.A. 2A:15-97*, and *Perreira*

*v. Rediger, 169 N.J. 399 (2001)* including, but not limited to, any medical bills or costs paid or reduced by health insurance coverage.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action may be barred by the applicable Statute of Limitations.

**NINTH AFFIRMATIVE DEFENSE**

Defendant's conduct was privileged, either absolutely or conditionally.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred by *res judicata* and/or collateral estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred by the Entire Controversy Doctrine.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's damages are limited by the Doctrine of Avoidable Consequences.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The alleged incident complained of resulted from circumstances beyond the control of Defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

While denying the allegations in the Complaint regarding damages allegedly sustained by Plaintiff, Defendant states that if Plaintiff prove such damages, they were caused by the superseding and intervening acts, negligence and/or fault of other parties or entities over whom Defendant had no control, nor right of control, and for whose actions Defendant is not and cannot be liable.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Defendant demands apportionment for any and all monies paid due to acts, conduct, negligence, committed by any co-defendant, third-party defendant, settled defendant, dismissed parties, or parties that were not joined by Plaintiff within the applicable statute of limitations.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Defendant incorporates by reference all affirmative defenses asserted by any co-defendant or third-party defendant in this action, whether such defense was asserted prior or subsequent to this pleading.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Defendant reserves the right to assert all defenses disclosed or developed in the course of discovery, arbitration and/or trial.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

If Plaintiff failed to follow the advice and direction of the health care providers regarding recommended treatment, then Plaintiff's recovery is barred or reduced by failure to mitigate damages.

**NINETEENTH AFFIRMATIVE DEFENSE**

Defendant had no actual or constructive notice of any condition alleged by Plaintiff.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff failed to avoid an open and obvious condition and/or assumed the risk of injury.

**ANSWER TO ANY AND ALL CROSSCLAIMS**

Walmart of Brick denies each and every crossclaim filed against them or to be filed against them in this action.

**DEMAND PURSUANT TO Rules 1:5-1(a) and 4:17-4(c)**

PLEASE TAKE NOTICE that the undersigned attorney for Walmart of Brick hereby demands that each party herein serving pleadings and/or discovery and/or receiving papers responsive thereto serve copies of all such pleadings, discovery and documents received from any party upon the undersigned and PLEASE TAKE FURTHER NOTICE that this is a continuing demand.

**DEMAND FOR DISCOVERY**

Please take notice that Walmart of Brick requests from Plaintiff certified answers to New Jersey Uniform Form "A" Interrogatories as found in Appendix II to the New Jersey Rules of Court, 2015.

**DEMAND FOR JURY TRIAL**

Trial by jury is hereby demanded pursuant to R. 1:8-2 and R. 4:35-1.

**DESIGNATION OF TRIAL COUNSEL**

Please take notice that Patrick McDonnell, Esquire, is hereby designated Trial Counsel.

**MCDONNELL & ASSOCIATES, P.C.**

*/s/ Lisa M. Only*

Dated: February 24, 2021

Patrick McDonnell, Esquire  
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Lisa M. Only, Esquire  
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*Attorneys for Defendant, Walmart of Brick*

**CERTIFICATION PURSUANT TO RULE 4:5-1**

Pursuant to R. 4:5-1, there are no other actions currently pending or contemplated. The undersigned hereby certifies that the subject matter of this litigation is not the subject of any other action pending in any other Court and is not the subject of any pending arbitration proceeding, nor is there any such action or arbitration proceeding contemplated. There are no other parties who should be joined in this action at this time.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**MCDONNELL & ASSOCIATES, P.C.**

*/s/ Lisa M. Only*

Dated: February 24, 2021

By:

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Lisa M. Only, Esquire  
*Attorneys for Defendant, Walmart of Brick*

**CERTIFICATE OF SERVICE**

I, Lisa M. Only, Esquire, hereby certify that on February 24, 2021, Defendant, Walmart of Brick's, Answer to Plaintiff's Complaint with Affirmative Defenses, Designation of Trial Counsel, Demand for Discovery, Certifications, and Jury Demand was filed and served via the New Jersey eCourts system. A true and correct copy of the filed document was also served via first class mail, postage pre-paid, upon the following counsel of record:

Albertina M. Amendola, Esquire  
JUDD SHAW, P.A.  
JUDD SHAW INJURY LAW  
1161 Broad Street, Suite 312  
Shrewsbury, New Jersey 07702  
*Attorneys for Plaintiff, Cherylee Crawford*

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*/s/ Lisa M. Only*

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Lisa M. Only, Esquire

## Civil Case Information Statement

### Case Details: OCEAN | Civil Part Docket# L-000205-21

**Case Caption:** CRAWFORD CHERYLEE VS WALMART OF BRICK

**Case Initiation Date:** 01/25/2021

**Attorney Name:** LISA MARIE ONLY

**Firm Name:** MC DONNELL & ASSOCIATES PC

**Address:** METROPOLITAN BUSINESS CENTER 860

FIRST AVENUE UNIT 5B

KING OF PRUSSIA PA 19406

**Phone:** 6103372087

**Name of Party:** DEFENDANT : WALMART OF BRICK

**Name of Defendant's Primary Insurance Company**

(if known): None

**Case Type:** PERSONAL INJURY

**Document Type:** Answer

**Jury Demand:** YES - 12 JURORS

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same transaction or occurrence)?** NO

**Are sexual abuse claims alleged by:** CHERYLEE CRAWFORD? NO

### THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** NO

**If yes, is that relationship:**

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**Please check off each applicable category:** Putative Class Action? NO Title 59? NO Consumer Fraud? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

02/25/2021

Dated

/s/ LISA MARIE ONLY

Signed



